

CAS 2024/A/10722* A. v. International Olympic Committee & B.

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Ulrich Haas, Professor in Zurich, Switzerland, and Attorney-at-law in Hamburg, Germany

Co-Arbitrators: Mr. Jeffrey Benz, Attorney-at-Law and Barrister in London, United Kingdom
Mr. Luigi Fumagalli, Attorney-at-Law and Professor in Milan, Italy

in the arbitration between

A., [...]

Represented by Mr. Claude Ramoni, Attorney-at-Law with Libra Law SA, Lausanne, Switzerland

Appellant

and

International Olympic Committee, Lausanne, Switzerland

Represented by Mr. Antonio Rigozzi and Mr. Patrick Pithon, Attorneys-at-Law with Lévy Kaufmann-Kohler, Geneva, Switzerland

First Respondent

and

B., [...]

Represented by Mr. Jean-Pierre Morand and Mr. Michael Kottmann, Attorneys-at-Law with Kellerhals & Carrard, Lausanne, Switzerland

** The Award has been redacted at the request of the Appellant to ensure that the identity of the athlete is not revealed, to which the Respondents have agreed.*

Second Respondent

I. THE PARTIES

1. A. (the “Appellant” or the “Athlete”) [...].
2. The International Olympic Committee (the “First Respondent” or the “IOC”) is the governing body of the Olympic Games and the organisation responsible for the Olympic Movement, having its headquarters in Lausanne, Switzerland. One of its primary responsibilities is to organise, plan, oversee and sanction the summer and winter Olympic Games, including the Summer Olympic Games in Paris in 2024 (“Olympic Games Paris 2024”) fulfilling the mission, role and responsibilities assigned by the Olympic Charter, which includes promoting peace through sport.
3. B. (the “Second Respondent” or the “B.”) is the world governing body for the sport of [...], recognised as such by the IOC.
4. The Appellant and Respondents are jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

5. The present dispute is primarily based on a decision by the IOC to declare the Appellant ineligible to participate as an Individual Neutral Athlete at the Olympic Games Paris 2024, based on the IOC “*Principles Relating to the Implementation of the Participation for Individual Neutral Athletes and their Support Personnel with a Russian or Belarusian Passport at the Olympic Games Paris 2024*” (the “AIN Principles”). The decision to declare the Appellant as ineligible for the said Games was made by the IOC AIN Eligibility Review Panel (the “AINERP”) on 23 May 2024 (the “Decision”). The Appellant only became aware of the Decision:

- i. When, on 15 June 2024, the IOC released the first list of athletes eligible to compete at the Olympic Games Paris 2024 as AIN, which did not include the Appellant’s name. The said list was updated on 3 July 2024, and the Appellant’s name was not included (the “First IOC Communication”).
- ii. When, on 5 July 2024, the IOC AIN Eligibility Review Panel (the “AINERP”) wrote to the Appellant stipulating that the Appellant does not satisfy the criteria in the AIN Principles – in relevant parts – as follows:

“Based on publicly available information, the AINERP understands that you have been, between March 2022 and June 2024, affiliated with one of the military or security clubs indicated on the official lists established by the Russian Ministry of Sport and Tourism. The AINERP shall only refer to the official documents publicly available.

On this basis, the AINERP considered that you are not fulfilling the conditions defined by the IOC Executive Board to be invited to take part in the Olympic Games Paris 2024.”

(the “Second IOC Communication”)

6. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, the CAS file and the content of the hearing that took place on 29 July 2024. References to additional facts and allegations found in the Parties' written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it shall refer in this Award only to those submissions and evidence it deems necessary to explain its reasoning.

i) The Activities of the Appellant

7. Since the Appellant was young, he was training at the [...] club, [...] (the "[...] Club"), in [...], the capital city of [...], Russia. The [...] Club is based outside another club, [...] Club (also referred to as [...] Club), which is a multi-sport club, a Russian public organisation with some parts still being closely linked to [...].
8. In [...], the Appellant won the [...] at the [...] event at the [...] in [...] ("[...]"). In the same year, the Appellant opened his own [...] school named [...] School, based in [...] (the "School"), and has since began to conduct his own personal training at the School, exclusively. Also in the same year, [...], [...] Club approached the Appellant to be an affiliate, wherein the Appellant entered into an agreement with [...] Club to take part in several sporting events [...] and provide training and services to the said Club. Since [...], the Appellant was regularly invited by Russian entities and [...] authorities to participate in related events based on his [...] prowess and accomplishments.
9. In [...], the Appellant won the [...] at the [...] at the [...] in [...] ("[...]"). After the said [...], the Appellant received additional funding from the Russian Ministry of Sport and other sponsors, wherein he invested those funds in the School.
10. On [...], the Appellant allegedly resigned and ended his collaboration with [...] Club. However, to date, the Appellant is still listed as a member of [...] Club on the Club's website.
11. From [...], the Appellant became the manager of the School, which became increasingly (and eventually, completely) independent from the Russian Ministry of Sport and other sponsors.

ii) The IOC Recommendations against Russia

12. On 28 February 2022, the IOC issued a resolution following Russia's invasion of Ukraine, providing in relevant parts as follows:
- "1. *In order to protect the integrity of global sports competitions and for the safety of all the participants, the IOC EB recommends that International Sports Federations and sports event organisers not invite or allow the participation of Russian and Belarusian athletes and officials in international competitions.*
2. *Wherever this is not possible on short notice for organisational or legal reasons, the IOC EB strongly urges International Sports Federations and organisers of sports events worldwide to do everything in their power to ensure that no athlete or sports*

official from Russia or Belarus be allowed to take part under the name of Russia or Belarus. Russian or Belarusian nationals, be it as individuals or teams, should be accepted only as neutral athletes or neutral teams. No national symbols, colours, flags or anthems should be displayed.

Wherever, in very extreme circumstances, even this is not possible on short notice for organisational or legal reasons, the IOC EB leaves it to the relevant organisation to find its own way to effectively address the dilemma described above.

In this context, the IOC EB considered in particular the upcoming Paralympic Winter Games Beijing 2022 and reiterated its full support for the International Paralympic Committee (IPC) and the Games.

[...].”

(the “2022 Recommendations”)

13. The B. implemented the 2022 Recommendations and the Appellant was not authorised to compete in international competitions in 2022, which included the [...].
14. On 12 October 2022, the IOC Executive Board suspended the Russian Olympic Committee (the “ROC”) with immediate effect until further notice due to the ROC’s unilateral decision, on 5 October 2022, to include all regional sports organisations under the authority of the Ukraine National Olympic Committee as its member. The IOC Executive Board stated that the IOC would reserve the right to decide on the participation of AINs with a Russian passport for the Olympic Games Paris 2024.
15. On 28 March 2023, the IOC issued the “*Recommended Conditions of Participation for Individual Neutral Athletes and Support Personnel with a Russian or Belarusian Passport in International Sports Competitions Organised by the International Federations and International Sports Event Organisers*” (the “2023 Recommendations”), which included the following guidelines for athletes with a Russian or a Belarusian passport to compete as Individual Neutral Athletes, as follows:

“[...]

Individual Neutral Athletes and their support personnel may return to international sports competitions only in an individual and neutral capacity, and not in any way as a representative of the Russian Federation or the Republic of Belarus, or any other organisation in their country, including their National Olympic Committee (NOC) or National Federation (NF).

Individual Neutral Athletes and support personnel who are contracted to the Russian or Belarusian military or national security agencies cannot participate in any international sports competition.

[...]

Only those Individual Neutral Athletes and support personnel who have not acted against the peace mission of the Olympic Movement by actively supporting the war in Ukraine may be invited to participate in international sports competitions.

Contracted members of the Russian and Belarusian military or national security agencies are considered to support the war.

With regard to other active supporting measures, all relevant circumstances, in particular public statements, including those made on social media; participation in pro-war demonstrations or events; and the displaying of any symbol supporting the war in Ukraine, for example, the “Z” symbol, have to be taken into consideration

[...]”

16. On 4 April 2023, the B. announced that it would examine the eligibility of Russian and Belarusian athletes following the 2023 Recommendations. Thereafter, the Chairman of the B. Legal & Ethics Commission formed a Panel of three members in order to review the eligibility criteria of athletes with Russian or Belarusian passports (the “B. Panel”).
17. On [...], the B. Panel declared the Appellant eligible for international competitions.
18. In [...], the Appellant took part in the [...] (the “[...] Championship”) as an AIN, wherein the Appellant [...]. The Appellant was the [...].
19. Following the 2022 and 2023 Recommendations, the Ukrainian government condemned the IOC’s decision and maintained a public blog and list of athletes who have allegedly supported the war in Ukraine, which included the name of the Appellant.

iii) Circumstances Surrounding the Appellant’s Qualification and Eligibility for the Olympic Games Paris 2024

20. On 6 December 2023, the IOC and the B. adopted the Qualification System for [...] for the Olympic Games Paris 2024 (the “[...] QS”).
21. On 8 December 2023, the IOC adopted the “*Principles Relating to the Implementation of the Participation for Individual Neutral Athletes and their Support Personnel with a Russian or Belarusian Passport at the Olympic Games Paris 2024*” (the “AIN Principles”), providing in relevant parts as follows:

“Individual Neutral Athletes (AINs) with a Russian or Belarusian passport and their support personnel may take part in the Olympic Games Paris 2024 only in an individual and neutral capacity, and not in any way as representatives of the Russian Federation or the Republic of Belarus, or any other organisation in their country, including their National Olympic (NOC) or National Federation (NF).

Only Individual Neutral Athletes who have fulfilled the specific eligibility and sporting qualification criteria set by their IF can be considered by the IOC for entry into the Olympic Games Paris 2024.

Only those Individual Neutral Athletes and support personnel who have not acted against the peace mission of the Olympic Movement by actively supporting the war in Ukraine may be invited to participate in the Olympic Games Paris 2024. In line with this principle, Individual Neutral Athletes and support personnel who are contracted to the Russian or Belarusian military or national security agencies cannot participate in the Olympic Games Paris 2024.

[...]

Individual Neutral Athletes and their support personnel will be registered on an individual basis.

The registration (accreditation and sport entries) of Individual Neutral Athletes and their support personnel will be coordinated jointly between the Paris 2024 Organising Committee, the relevant IF, and the IOC.

Only Individual Neutral Athletes who have fulfilled the specific eligibility and sporting qualification criteria set by their IF can be considered by the IOC for entry into the Olympic Games Paris 2024.

Like all athletes participating in the Olympic Games Paris 2024, the Individual Neutral Athletes must sign the Conditions of Participation form.

The IFs will be required to submit the list of qualified and eligible AIN athletes (together with the criteria and reasoning used to confirm eligibility) to the IOC upon completion of qualification in the relevant sport/discipline, and the IOC will then review these lists for a final decision on entry by sport.

In addition, Individual Neutral Athletes and their support personnel must refrain from any activity or communication associated with the national flag, anthem, emblem or any other symbol of the Russian Federation, the Republic of Belarus, their NFs or NOCs, or support for the war in Ukraine (including, without limitation, the “Z” symbol, Saint George colours, and any other military branding and slogans), at any official venue or in the media (including interviews, social media – retweets, reposting, etc.) prior to, during and following the Olympic Games Paris 2024. This includes any national events, related to their participation in the Olympic Games Paris 2024.

The IOC will seek an independent evaluation of the eligibility of each qualified AIN athlete proposed by the IF, and their support personnel. Once the independent evaluation has been completed, the IOC will confirm to Paris 2024 which athletes and support personnel can be entered in an individual neutral capacity.

The IOC, at its full discretion, will have final authority to determine the entry and accreditation for any individual, and may reconsider that determination at any time where it deems appropriate to do so. No individual neutral athlete or their support personnel with a Russian or Belarusian passport is entitled as a right to be entered in the Olympic Games Paris 2024.”

22. On [...], the B. Panel declared the Appellant eligible to participate at the [...].
23. On 19 March 2024, the IOC Executive Board established the AINERP to evaluate the eligibility of each athlete and support personnel with a Russian or Belarusian passport who obtained, or could obtain, a qualification place for the Olympic Games Paris 2024. The AINERP is composed of three members, viz, Ms. Nicole Hoevertsz (IOC Vice President), Mr. Pau Sadol (IOC Ethics Commission), and Mr. Seung Min Ryu (IOC Athletes’ Commission), with Ms Paquerette Girard Zappelli (IOC Chief Ethics and Compliance Officer) as secretary. The AINERP also appointed Sportradar Integrity Services (“Sportradar”) as its independent external expert to conduct due diligence on each AIN.
24. On 2 April 2024, Sportradar prepared an individual report dated 15 March 2024 on the Appellant which indicated the Appellant’s association with [...] Club, which was deemed to be an entity affiliated with the Russian [...] (the “Sportradar Report”). In the Sportradar Report, there was further evidence of the Appellant’s expression of support for the war in Ukraine:

- a) On [...], on the day of Russia's invasion of Ukraine, the Russian [...] team was at a training camp in [...], Russia, wherein a video was posted on Instagram showing the team sitting under a banner of President Vladimir Putin which reads in Russian, but in translation, "*Russian [...]. For a strong Russia! For a strong President!*"
 - b) On [...], the Appellant participated in [...] in [...], Russia, [...], at which the Appellant was surrounded by athletes and members of the Russian military wearing the symbol "Z", which is used both as a Russian military insignia and as a public symbol of Russia's invasion of Ukraine. In addition, there was a banner reading in Russian, as translated, "*Peace without Nazism, For Russia*", alluding to the purported "denazification" of Ukraine, which is part of the Kremlin's asserted basis for the invasion.
 - c) In [...], the Appellant attended [...] in [...], Russia, of a [...] dedicated to Russian law enforcement officers killed in Donetsk and Luhansk, Ukraine, during Russia's "special military operation", at which the Appellant was photographed alongside Russian officials under the banner bearing the symbol "Z" which reads, in Russian, in translation, "*[...] tournament dedicated to the memory of law enforcement officers killed during the special operation on the territory of the LPR, DPR and Ukraine*".
 - d) In [...], the Appellant attended, as a guest, a [...] in [...], Russia, dedicated to the memory of [...] military personnel who were killed in the war against Ukraine.
 - e) According to a Twitter (now X) post published by "Base of Ukraine Sports" in November 2023, the Appellant liked an Instagram post published on [...] with the symbol "Z" and supporting the war in Ukraine. The Appellant had since removed his like from the said post.
 - f) In [...], the Appellant was photographed with a Russian soldier wearing a military uniform, which soldier had allegedly taken part in the war in Ukraine.
25. Based on the Report, the B. Panel reviewed its decision on the eligibility of the Appellant and determined that the Appellant did not meet the criteria set out in the AIN Principles.
26. On [...], two days before the Appellant was due to compete in the [...], the Appellant received a letter from B. informing him that he was no longer eligible to compete. The letter reads – in relevant parts – as follows:

"Panel Decision

On the eligibility of [...] holding a Russian or Belarussian passport to participate in any international event on the official B. calendar:

[...]

The Chairman of the B. Legal & Ethics Commission has formed a Panel of three (3) members of this Commission to review the eligibility criteria of the following athlete/ athlete support

personnel pursuant to the Conditions, and based on the individual reports submitted after due diligence conducted by Sportradar, a private integrity service provider, in relation to potential violations of the Conditions.

Considering that new information concerning potential declarations contrary to the Conditions were reported to the B. Administration, a review of the decision [...] was carried out.

In view of the above, the Panel render the following decision:

*1) The following athlete is declared **ineligible**:*

<i>A.</i>	<i>[...]</i>	<i>[...]</i>	<i>Athlete</i>	<i>[...]</i>	<i>[...]</i>
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This decision enters in force on the date of the decision.

[...]” (emphasis in original) (the “Final B. Decision”)

27. Upon receipt of the Final B. Decision, the Appellant contacted the President of the [...] (the “[...] President”). The Appellant submits that the [...] President allegedly informed him that the IOC had found him ineligible as the Appellant was contracted to [...] Club. The Appellant requested the [...] President to provide him with the said communication from the IOC deeming him ineligible, but the Appellant never received the said letter.
28. At the [...], two AIN athletes from Russia, viz, [...], finished in the [...] positions and secured one quota place each.
29. Sometime between [...], the Appellant [...]. The [...] President informed the Appellant that the Appellant’s papers would be sent to the IOC, and his selection would be dependent entirely on the IOC.
30. On 6 May 2024, B. sent a list of athletes to the IOC on the eligibility and qualification status of B. athletes, which reflected the development of the Appellant’s (in)eligibility status.
31. On 23 May 2024, the Appellant, together with [...], wrote a letter to the B. and IOC Presidents with a request to be authorised to participate at the Olympic Games Paris 2024 as AIN.
32. On the same day, the AINERP declared the Appellant as ineligible to take part in the Olympic Games Paris 2024 pursuant to the AIN Principles (the “Decision”) but did not communicate the Decision to the Appellant or other relevant parties immediately.
33. The [...] (the “[...]”) submitted [...] athletes in the [...] competition for the Olympic Games Paris 2024 as AIN, including the Appellant’s name in the [...].
34. On [...] 2024, the IOC released the first list of athletes eligible to compete at the Olympic Games Paris 2024 as AIN, which did not include the Appellant’s name (the “First IOC Communication”). The said list was updated on [...] 2024, and the Appellant’s name was not included.

35. On 24 June 2024, the Appellant wrote to the IOC Chief Ethics and Compliance Officer, members of the AINERP, and the Chair of the IOC Athletes' Commission, requesting clarification on the eligibility process, which correspondence provides in relevant parts as follows:

"[...] More specifically, I would like to put forward the lack of transparency in connection with the vetting process. I strongly believe that I do meet the vetting requirements. I have resigned from the [...] Sport Society in [...] on January 1st 2022, I have no military associations, nor do I receive any support or grants from the military.

[...]"

36. On 5 July 2024, the AINERP wrote to the Appellant stipulating that the Appellant does not satisfy the criteria in the AIN Principles, stating, in relevant parts as follows:

"Based on publicly available information, the AINERP understands that you have been, between [...], affiliated with one of the military or security clubs indicated on the official lists established by the Russian Ministry of Sport and Tourism. The AINERP shall only refer to the official documents publicly available.

On this basis, the AINERP considered that you are not fulfilling the conditions defined by the IOC Executive Board to be invited to take part in the Olympic Games Paris 2024."

(the "Second IOC Communication")

III. THE APPEAL PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

37. On 5 July 2024, the Appellant filed the Statement of Appeal against the Respondents with the CAS in accordance with Article R48 of the CAS Code of Sports-related Arbitration (2023 edition) (the "CAS Code"). In the Statement of Appeal, the Appellant, *inter alia*, requested for an expedited procedure.
38. On 8 July 2024, the CAS Court Office acknowledged receipt of the Appellant's Statement of Appeal and invited the Appellant to submit his Appeal Brief. In the same letter, the CAS Court Office invited the Respondents to comment on the Appellant's request for an expedited procedure and nomination of an arbitrator.
39. On 9 July 2024, the IOC informed the CAS Court Office that it agreed with the Appellant's request for an expedited procedure.
40. On the same day, the CAS Court Office acknowledged receipt of the IOC's letter of 9 July 2024 and invited B. to respond on the same and on the updated procedural calendar jointly proposed by the Appellant and the IOC.
41. Still on the same day, the Appellant filed his Appeal Brief in accordance with Article R51 of the CAS Code.
42. On 10 July 2024, the CAS Court Office acknowledged receipt of the Appellant's Appeal Brief and invited the Respondents to file their respective Answers.

43. On the same day, B. informed the CAS Court Office that it agreed with the Appellant's request for an expedited procedure, and the updated procedural calendar.
44. Still on the same day, the CAS Court Office acknowledged receipt of the letter from B. of even date, and confirmed the following procedural calendar:
- 12 July 2024: *Appointment of the arbitrator chosen by the Respondents;*
 - 22 July 2024: *Filing of the Respondent's Answer (with a direct copy to the Appellant); and*
 - 29 July 2024: *Hearing, to the extent necessary.*
45. On 12 July 2024, the IOC informed the CAS Court Office that the Respondents jointly nominated Professor Luigi Fumagalli as arbitrator.
46. On 15 July 2025, the CAS Court Office acknowledged receipt of the IOC's letter dated 12 July 2024.
47. On 16 July 2024, the Appellant informed the CAS Court Office that the Appellant nominated Mr. Jeffrey Benz as arbitrator.
48. On the same day, the CAS Court Office acknowledged receipt of the Appellant's letter of even date.
49. On 22 July 2024, the IOC and B. filed their respective Answers pursuant to Article R55 of the CAS Code.
50. On 23 July 2024, the Appellant requested that the CAS provide "*the confirmation of the composition of the panel and an invitation to attend the hearing ... by tomorrow at noon CET.*"
51. On 24 July 2024, the CAS Court Office acknowledged receipt of the Respondents' Answers. In the same Letter, the CAS Court Office informed the Parties that pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Panel to decide the present dispute was constituted as follows:
- | | |
|--------------|--|
| President: | Prof. Dr Ulrich Haas, Professor of Law in Zurich, Switzerland, and Attorney-at-Law in Hamburg, Germany |
| Arbitrators: | Mr. Jeffrey G. Benz, Attorney-at-Law and Barrister in London, United Kingdom |
| | Professor Luigi Fumagalli, Professor of Law and Attorney-at-Law in Milano, Italy |
52. On the same day, the CAS Court Office invited the Parties to attend the hearing on 29 July 2024 via videoconference and enclosed an Order of Procedure ("OoP") for the

Parties' signature. The Appellant and the First Respondent submitted their signed OoP on 26 July 2024, the Second Respondent on 25 July 2024.

53. On 26 July 2024, the Appellant submitted (together with an updated list of exhibits) an additional document to be included in the case file (Statement by the Russian Ministry of Sport, Exhibit A32) on the basis of the following exceptional circumstances (Article R56 of the CAS Code):

*"In its Answer of 22 July 2024, the IOC reproached the Appellant his affiliation to the [...] club, relying on lists of athletes and officials issued by the Russian Ministry of Sport for the years 2022 to 2024 (Answer, §67, **Exhibits R-18 to R-20**). The Appellant was unaware of the existence of such documents before their filing by the IOC and could not have anticipated that they existed. Such lists have not been provided by the IOC with its email to the Appellant of 5 July 2024 (**Exhibit A17**).*

***Exhibit A32** is a more recent statement issued by the Russian Ministry of Sport explaining why the content of the lists of the Ministry produced by the IOC is incorrect with respect to the Appellant's alleged affiliation with [...]. This document confirms that there is no current link between the Appellant and the [...] Club. ...*

The Appellant therefore stated in its Appeal Brief that he has no connection with the [...] Club since the end of [...]. Consequently, this written statement confirms the statements made by the Appellant in its Appeal Brief and rebuts the evidence filed by the IOC.

*The Respondents are also not harmed by the production of **Exhibit A32** as this exhibit only relates to allegations already previously made by the Appellant. Further, the Respondents will be able to comment on the content of this statement at the hearing of 29 July 2024."*

54. On the same day, the CAS Court Office acknowledged receipt of the Appellant's letter and granted Respondents until the end of 26 July 2024 to file their comments to the Appellant's request. The letter further advised the Parties that the Appellant's request would then be dealt with at the outset of the hearing scheduled for 29 July 2024.
55. On the same day, the Appellant wrote to the CAS Court Office as follows:

"Reference is made to your correspondence earlier today and the new Exhibit filed by the Appellant. Due to an administrative oversight, I had not received the updated list for 2024 mentioned in such correspondence. You will see it attached, together with an English translation of the relevant lane. ...".

56. Still on the same day, the First Respondent in its letter to the CAS Court Office objected to the Appellant's request on the grounds that there were no exceptional circumstances to admit the new document on file. More specifically, the First Respondent stated:

"According to the CAS case law, "exceptional circumstances" are recognised when the need to present rebuttal evidence only becomes apparent after the other party's submission.1 Such evidence must be genuine rebuttal evidence and not merely new additional evidence disguised as rebuttal evidence.

In the present case, the Appellant cannot reasonably claim that the IOC's reference to the lists of athletes and officials issued by the Russian Ministry of Sport was unknown to him until the filing of the IOC's Answer.

First, the Appellant's claim that "such lists have not been provided by the IOC with its email to the Appellant of 5 July 2024" is irrelevant. As explained by the AINERP in this email,

these lists are publicly available information. These lists could easily have been found by the Appellant on the website of the [...] or the website of the Russian Ministry of Sport and Tourism.

Second, the Appellant was perfectly aware of the existence of these lists on 5 July 2024 at the latest. Indeed, on 5 July 2024, the AINERP informed the Appellant that the decision of his ineligibility decision was based on 'publicly available information' according to which he has been 'between [...], [...] affiliated with one of the military or security clubs indicated on the official lists established by the Russian Ministry of Sport and Tourism.' The submission of such late evidence at the eleventh hour on the (false) basis that he was 'unaware of the existence' of these lists does not constitute exceptional circumstances under Article R56(1) of the CAS Code that would allow the Appellant to supplement his appeal after the exchange of submissions."

57. Always on the same date, also the Second Respondent objected to the belated filing of new documents by the Appellant.
58. On 27 July 2024, the CAS Court Office advised the Parties that the issue of the new documents filed by the Appellant would be decided by the Panel at the outset of the hearing. Furthermore, the letter enclosed – on behalf of the President of the Panel – a tentative hearing schedule for the Parties' attention.
59. On the same day, the Appellant responded to the objections raised by the Respondents and submitted that he *"could reasonably not provide such a statement, as he had not been heard before the Challenged Decision was issued, and as he only had access to the detailed reasons for the IOC decision, and the supporting evidence ... when he received the Answering brief by the IOC."*
60. In a letter dated 29 July 2024, the CAS Court Office reminded the Parties that the issue of the late filing of the documents would be dealt with at the outset of the hearing.
61. On 29 July 2024, a hearing took place by videoconference before the Panel. Besides Ms. Lia Yokomizo (Counsel of the CAS), the following persons attended the hearing:

For the Appellant

- The Appellant;
- Mr. Claude Ramoni (Counsel for the Appellant);
- Mr. Flavio Pirrello (Trainee Counsel for the Appellant);
- Ms. Margarita Larshina (Interpreter);

For the IOC

- Mr. Antonio Rigozzi (Counsel for the IOC);
- Mr. Patrick Pithon (Counsel for the IOC);

For B.

- Mr. Jean-Pierre Morand (Counsel for B.);
- Mr. Michael Kottmann (Counsel for B.); and
- [...].

62. At the outset of the hearing, the Parties confirmed that they had no objection to the jurisdiction of the CAS and the formation of the Panel. Furthermore, the Panel decided

to admit the new documents filed by the Appellant on 26 July 2024 on file.

63. At the closing of the hearing, the Parties declared that their right to be heard had been respected and that they had no objection to the way the hearing had been conducted.
64. On 30 July 2024, the CAS Court Office communicated the operative part of the Arbitral Award issued by the Panel.

IV. SUBMISSIONS OF THE PARTIES

65. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Panel has accounted for and carefully considered all the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellant's Position

66. In its Appeal Brief, the Appellant requested as follows:

- "I. The appeal is upheld.*
- II. The decision by the IOC not to allow the participation of the athlete A. as an Individual Neutral Athlete in the Olympic Games Paris 2024 is annulled.*
- III. The athlete A. is eligible to take part in the [...] competitions as an Individual Neutral Athlete at the Olympic Games Paris 2024.*
- IV. The IOC and B. shall be ordered to grant an accreditation to A. as Individual Neutral Athlete at the Olympic Games Paris 2024 and to allow his participation / enter him in the Olympic [...].*
- V. The procedure shall be free of charge as per Article R65 CAS Code. In the event that arbitration costs are to be paid to the CAS, the IOC and B. (in proportions to be decided by the Panel) shall be ordered to bear all arbitration costs (if any) and to reimburse to the athlete A. any advance on costs paid by the later, as well as the minimum CAS Court Office fee of CHF 1,000.*
- VI. the IOC and B. shall each be ordered to pay the athlete A. a contribution towards the legal and other costs incurred in the framework of these proceedings in an amount to be determined at a later stage or at the discretion of the Panel."*

i) Applicable Law and Review

67. The Appellant submits that, pursuant to Article R58 of the CAS Code, the applicable regulations would be the Olympic Charter and further regulations issued by the IOC, such as the AIN Principles. The Appellant further submits that given that the IOC's seat is in Lausanne, Switzerland, Swiss law ought to apply on the merits of the case.

68. The Appellant also contends that the CAS has full power to review the fact and the law in accordance with Article R57(1) of the CAS Code (CAS OG 10/001, CAS 2019/A/6557 & 6663).

ii) Jurisdiction and Admissibility

69. The Appellant maintains that the CAS has jurisdiction to deal with the present dispute pursuant to Rule 61 of the Olympic Charter, which specifies that any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the CAS. In addition, as the present case pertains specifically to the Decision dated 24 May 2024, which was only communicated on 15 June 2024 (the First IOC Communication) and 5 July 2024 (the Second IOC Communication), the present appeal, filed on 5 July 2024, was filed in time and is therefore admissible.

iii) Merits

70. The Appellant contends that he has met the all the criteria provided for in the AIN Principles, and all eligibility decisions ought to comply with the Olympic Charter and general legal principles, as follows:
- The AIN Principles should be read as “conditions of participation” under the meaning of Rule 40.1 of the Olympic Charter; as such, when reading and interpreting the AIN Principles, general principles found in the Olympic Charter must be considered, in particular, the Fundamental Principles of Olympism.
 - The Olympic Charter makes clear that the interests of athletes “*constitute a fundamental element of the Olympic Movement’s action*”, pursuant to Rule 1.3 of the Olympic Charter, which also applies to AINs. As such, if any AINs fulfil the criteria laid down by the IOC in the AIN Principles, they should be entitled to participate at the Olympic Games Paris 2024, and any reasoning to the contrary would result in an arbitrary, unfair, and discriminatory situation in violation of the Olympic Charter.
 - The measure of not inviting the Appellant to participate in the Olympic Games Paris 2024 aims at sanctioning an alleged prior misbehaviour and qualifies as a “sanction”, not a “eligibility rule” (CAS 2007/O/1381; CAS 2011/O/2422).
 - Sanctions imposed by sporting bodies must comply with legal principles, such as the principle of legality (CAS 2014/A/3621, paras. 115 and 116), the principle of non-retroactivity (CAS 2008/A/1584), the principle *nulla poena sine culpa* (TAS 2007/O/1381, para. 61; CAS 2008/A/1583 & 1584), the principle of proportionality (CAS 2016/O/4684; CAS 2020/O/6689, para. 721).
 - As the Decision must be construed as a “sanction”, the IOC has the burden of proof to demonstrate that the Appellant acted “*against the peace mission of the Olympic Movement*” (CAS 2015/A/4355, para. 4.17; CAS 2011/A/2384 & 2386, paras. 102 to 104). This is supported by the Appellant’s non-involvement in the process that led to the Decision, which shows that the burden of proof lies with

the IOC. If the Appellant has to bring evidence to show the same, it would be evidence of negative facts, that he has “*not acted against the peace mission of the Olympic Movement*”, which would be very difficult.

71. The Appellant maintains that he met the sporting criteria to be qualified for the Olympic Games Paris 2024 as the AIN team has secured [...] quota places for the [...] at the [...], and the Appellant is the [...] AIN athlete in the said category ([...]). In any event, the [...] selected the Appellant as the AIN athlete and entered his name to compete at the Olympic Games Paris 2024.
72. The Appellant maintains that he is not contracted to the Russian military or national security agencies, and should not be made ineligible for the Olympic Games Paris 2024 on that basis:
 - The Appellant has no military association and has received no money from the military since [...]. The Appellant is also not a member of the Russian army or Russian security agencies, or the Russian police.
 - The Appellant’s past affiliation with a [...] Club does not mean that he is under contract with military or national security agencies within the meaning of the AIN Principles. [...] Club is a large organisation which is historically linked [...], but is not considered “national security agencies”. In any event, the Appellant is no longer a member of [...] Club since [...]. The Appellant became financially independent after [...] and was able to stop all affiliations with [...] Club.
 - The Appellant does not have any other contract, affiliation or the like, with the Russian army, armed forces, the police, law enforcement authorities or other similar agencies or institutions.
73. The Appellant maintains that he does not “actively” support the war in Ukraine, and should not be made ineligible for the Olympic Games Paris 2024 on that basis:
 - The interpretation of the AIN Principles for the said criteria must *bona fide* mean that in order to be deemed ineligible, athletes need to be “active” or engage in a conduct showing their active support to the war in Ukraine. Athletes who remain “neutral” by not providing any opinion cannot be deemed to support the said war, especially since athletes based in Russia cannot freely express their opinion about the situation in Ukraine.
 - The Appellant had confirmed in writing that he will “*refrain from making any form of political statement or demonstration*”.
 - The Decision by AINERP did not mention any publications by the Appellant. In his personal social media accounts, the Appellant does not show or display any support to the war in Ukraine or even display any Russian flag. The Appellant has never made any public statement supporting the war in Ukraine and has always adopted a “neutral” position.

- The Appellant was made aware of the statements provided by the Ukraine NOC and Ukraine Ministry of Sport about him, but they are wrong and misleading, in particular:
 - With regard to the Appellant's photograph with a soldier; the Appellant was approached to take a photograph with the soldier as a famous athlete in the country, and did not know that the person was a soldier and thought that he was just from security. The Appellant did not know this photograph existed or reposted this photograph.
 - With regard to the Appellant's alleged liking of a post displaying a "Z"; the Appellant had no knowledge of this alleged conduct, and checked that it was not true.
 - The Appellant never appeared in public wearing a uniform with a "Z" or publicly displaying any support to the war in Ukraine. The Appellant always dresses in neutral colours. When he was invited as an Olympian to take part in [...] held in [...] on [...], he did not know that it was an event in support of the war in Ukraine. In any event, he did not wear any attire with "Z" on it, contrary to the other participants there. The Appellant cannot be expected to refuse an invitation from public authorities and cannot be expected to be considered as "actively" demonstrating support for the war by boycotting the said event.
 - The Appellant never participated in any tournament dedicated to the memory of soldiers or with any pro-war connotation. The Appellant was invited as a special guest to [...], and while it is true that there were displays on the war in Ukraine, the Appellant cannot be held responsible if he sometimes appears in photographs with the posts or signs on the war, and this does not mean that the Appellant endorses any of such messaging.
 - The Appellant cannot be reasonably asked to actively object to the war and adopting a "neutral" position can already be perceived in Russia as a sign of lack of support for the Russian military operation in Ukraine.
 - The Decision must respect the principle of proportionality and any ban of the Appellant must respect the same principle.
74. The Appellant's neutrality regarding the war in Ukraine is highlighted by testimonies provided from his competitors from [...].
75. The Decision was based on incorrect information and the Appellant should not be faced with the situation of *fait accompli*. The IOC can accept an additional athlete and organise an additional fight, which is not complex to organise.
76. At the hearing, the Appellant further submitted that there was no feasible way for the Appellant to appeal the Final B. Decision, as there was no arbitration clause within the

B.'s governing documents, and the only alternative was for the Appellant to go through the domestic court process requesting for provisional measures. In any event, the IOC has full discretion to make the final determination on the eligibility of the Appellant, and the present appeal is based on the Decision of the IOC.

77. With regard to B.'s objections to be included as a respondent to the present proceedings, the Appellant submits that B.'s position would be affected by the present appeal and any outcome of the present appeal would bind B. in their administration of the sport at the Olympic Games Paris 2024.

B. The IOC's Position

78. In its Answer, the IOC requested the Panel to rule as follows:

- “(i) The Appeal filed by A. and all of its prayers for relief are dismissed.*
- (ii) The decision of the AIN Eligibility Review Panel declaring A. ineligible is upheld.*
- (iii) A. shall bear all arbitration costs incurred with the present proceedings and pay a contribution towards the legal costs incurred by IOC in connection with these proceedings.”*

i) Jurisdiction and Admissibility

79. The IOC accepts the jurisdiction of the CAS in the present arbitration and does not dispute that the Appellant's Statement of Appeal and Appeal Brief have been filed within the applicable time limits and are thus admissible.

ii) Applicable Law

80. The IOC agrees that the rules of law applicable to the merits of the present proceedings are governed by Article R58 of the CAS Code and agrees that the present dispute be decided primarily according to the Olympic Charter (in force from 15 October 2023) and the AIN Principles, and subsidiarily, Swiss law.

iii) Merits

81. The IOC submits that the Appellant's allegation concerning the application of the AIN Principles is misplaced and that such application does not amount to a “sanction”:

- According to CAS jurisprudence, a rule that bars an individual from participating in an event due to prior undesirable behaviour qualifies as a sanction, but necessary elements must be satisfied, viz, (i) adverse consequences; (ii) that are designed to punish; (iii) misconduct by the addressee of the sanction (CAS 2020/O/6689, para. 677 et seq.). However, these conditions are not met in the case at hand.
- Qualification or eligibility rules that serve to ensure that athletes meet the performance ability requirement do not seek to sanction undesirable behaviour

by athletes, but define certain attributes required of athletes and formalities to be met.

- The AIN Principles are clearly qualifying or eligibility rules under CAS jurisprudence and not a “sanction”, wherein the IOC did not deprive the Appellant of any “right” he may have had to participate, as set out in Rule 40.1 of the Olympic Charter.
- Under Rule 44.3 of the Olympic Charter, the IOC had discretion to refuse entry to the Olympic Games. The IOC has suspended the ROC, despite individual athletes not having violated the Olympic Charter. The IOC therefore decided that Russian athletes could participate in the Olympic Games on an individual basis under certain conditions, in order to protect the rights of individual athletes and staff who do not support the Russian war against Ukraine, which was designed not to sanction the Appellant but offer him the opportunity to participate should he meet the conditions *i.e.*, the AIN Principles.
- This interpretation is in line with consistent CAS case law (CAS 2016/O/4684; CAS OG 16/019, para. 7.11-7.12; CAS OG 18/03, para. 7.4; CAS OG 18/02, para. 7.4)
- The Appellant’s submissions on the principles of legality, non-retroactivity, *nulla poena sine culpa* and proportionality, as well as burden and standard of proof are irrelevant to the present case.

82. The IOC maintains that the AINERP rightly considered that the Appellant is ineligible for the Olympic Games Paris 2024, as he has not been declared eligible by B.:

- The IOC does not dispute that a quota place for the [...] was earned by the AIN team with a Russian passport, and that [...] entered the Appellant’s name to compete in the Olympic Games Paris 2024.
- Pursuant to the AIN Principles, “*only AIN who have fulfilled the specific eligibility and sporting qualification criteria set by their IF can be considered by the IOC for entry into the Olympic Games Paris 2024*”. This is consistent with Rule 40.1 of the Olympic Charter.
- On 3 April 2024, B. declared the Appellant ineligible to participate in its events, wherein the Appellant has not challenged the Final B. Decision. This makes the Appellant directly ineligible under the AIN Principles. While the AINERP did not examine the basis for the Final B. Decision and made the Decision, the Final B. Decision is itself an independent basis to reject the Appellant’s appeal.

83. The IOC maintains that the AINERP rightly considered that the Appellant is ineligible for the Olympic Games Paris 2024, as he is affiliated with the [...] Club:

- [...] Club was created [...] in the Soviet Union whose members were drawn

from [...]. Today, [...] Club is affiliated to the Russian [...], wherein members and employees of the said Club are also members of and paid by the Russian [...]. The Chairman of [...] Club is [...]. On the official website of [...] Club, the Club states that its mission is the “[...]”.

- All athletes affiliated with [...] Club have been declared ineligible for the Olympic Games Paris 2024, as the said Club clearly has strong ties to the Russian government and military.
- While the Appellant claims that he has not been a member of the [...] Club since [...], the evidence on file contradicts this position. The Appellant is still listed on the website of [...] Club as one of its member athletes, as well as listed as a member of [...] Club in a list by the Russian Ministry of Sports [...], and still in same list for [...]. There is no written contemporaneous evidence that the Appellant had concluded his relationship with [...] Club [...].

84. The IOC maintains that the AINERP rightly considered that the Appellant is ineligible for the Olympic Games Paris 2024, as he has actively supported the war in Ukraine in numerous occasions:

- While the Appellant claims that he has never made any public statement in support of the war in Ukraine and has always maintained a “neutral” position, the Appellant’s position is contradicted by contemporaneous evidence on file, in particular by the information provided by Sportradar.
- The fact that the Decision did not raise the Appellant’s public displays of active support for the war in Ukraine is irrelevant, as the *de novo* principle under Article R57 of the CAS Code grants this Panel the power to review the facts and law afresh.

85. At the hearing, the IOC submitted that the Final B. Decision did not prevent the AINERP or the IOC determining that the Appellant was not eligible for the Olympic Games Paris 2024 as the criteria for eligibility for the said Games are cumulative. As such, it is no mistake that the First and Second IOC Communications only refer to the criteria found in the AIN Principles.

86. The IOC also further submitted that, in order to be eligible to participate at the Olympic Games Paris 2024, athletes with Russian and Belarusian passports have to satisfy the AIN Principles as well as the criteria set by the International Federation (“IF”), in this case, B. As the Appellant has not satisfied the eligibility criteria set by B., he would, in any event, be ineligible to participate in the Olympic Games Paris 2024 on that basis. It is not in the practice of the IOC to use its discretion to “override” the ineligibility requirement of the IFs, but it is within the IOC’s discretion to add additional eligibility criteria, such as the AIN Principles.

C. B.’s Position

87. In its Answer, B. requested the Panel to rule as follows:

- “1. *The appeal filed by A. shall be declared inadmissible.*
2. *The appeal filed by A. shall be dismissed, or, subsidiarily, the appeal filed by A. as directed against B. shall be dismissed;*
3. *The arbitration costs shall be borne by A.*
4. *B. is granted a contribution to its legal and other costs.”*

i) Admissibility

88. B. submits that, to the extent that the Appellant only requests for the annulment of the Decision by the IOC and not of the Final B. Decision (which also affects his eligibility), as well as for the Athlete to be declared as eligible (and granted the spot) to compete at the Olympic Games Paris 2024, B. has no *légitimation passive* to be a respondent in the present case.
89. Further, B. submits that the Appellant’s ineligibility to compete at the Olympic Games Paris 2024 is based on the Final B. Decision, and the Appellant’s present appeal against the Decision by the IOC is not supported by any actual interest of the Appellant. Even if the Panel decides to annul the Decision by the IOC, B. maintains that the Appellant remains ineligible to compete at the Olympic Games Paris 2024 by virtue of the Final B. Decision, and any request by the Appellant now is a belated and abusive attempt to invalidate the Final B. Decision belatedly.

ii) Merits

90. B. maintains that the appeal must be dismissed as the Final B. Decision – which remains unchallenged – ensures the Appellant’s ineligibility for the Olympic Games Paris 2024:
- Under the AIN Principles, it is set out that AINs must fulfil the “*specific eligibility and sporting qualification criteria set by their IF*” before they can be considered by the IOC for entry into the Olympic Games Paris 2024, and the IF (here, B.) makes the first selection for the said Games before being independently reviewed by the IOC.
 - At the hearing, B. maintains that the Final B. Decision expressly indicate that the Appellant is rendered ineligible to participate in “*any international event on the official B. calendar*”, which includes the Olympic Games Paris 2024.
 - As such, the Appellant was not selected by B. and his name was not proposed to the IOC for their independent review. At the hearing, it was further added that it is not within the IOC’s practice to overrule the non-selection of an athlete as proposed by B.
 - The Appellant’s request ought to be dismissed as his non-selection is based on the non-inclusion in the list by B. to the IOC, regardless of the IOC’s decision on the Appellant. There was, in fact, no need for any decision by the IOC on the Appellant’s non-inclusion, which was made (arguably) as an oversight, to

declare the Appellant not re-instated onto a list he could not belong to in the first place.

- The Appellant could have challenged the Final B. Decision before Swiss courts but chose not to do so.
- The Final B. Decision was, in any event, only based on the evidence tendered from the Sportradar Report, and not on any of the contested basis raised at the hearing on the Appellant's relationship with [...] Club.
- As such, there is no decision to be appealed against the IOC in the present case.

91. In any event, B. observes that the Appellant does not meet the AIN Principles for participation at the Olympic Games Paris 2024:

- B. implemented the First Recommendations and Second Recommendations from the IOC pertaining to AINs and applied them when issuing decisions on the eligibility of AINs. The same standards were applied by the AINERP.
- B. relied on additional information from the Sportradar Report and made the Final B. Decision on the ineligibility of the Appellant. The Final B. Decision was not challenged by the Appellant, which indicates that he understood and accepted the newly considered elements. In any event, the Final B. Decision is not on appeal in the present case.
- The same facts and standards were referred to in both the Final B. Decision and the Decision by the IOC, wherein the same elements gave rise to the same decision, viz, that the Appellant is ineligible to compete at the Olympic Games Paris 2024.
- The existence of the Final B. Decision provides a strong indication that the Decision is correct, but it gives more significance to the importance of deferring not to the Decision but also the solution already implemented by B. on the same issues (in the Final B. Decision), for which the Appellant already accepted the decision.
- Deference ought to be afforded to decisions of sports governing bodies, and the Panel should only intervene and revise a decision if it is clearly not a correct one (CAS 2022/A/8865 & 8868, paras. 89 to 91). The Decision on appeal is not the result of an incorrect exercise of the power of appreciation, requiring a revision of the Decision.
- In the totality of the appeal, there is no doubt that the decision to declare the Appellant as ineligible is supported by a correct and reasonable appreciation of the facts on file.

V. JURISDICTION

92. According to Article R47 of the CAS Code, the Panel has jurisdiction to hear:

“[a]n appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.

93. Given that the Respondents do not object to the jurisdiction of the CAS, that all Parties have signed the OoP without reservation, and that all Parties fully participated in these proceedings without reservation, the Panel finds that it has jurisdiction to hear the present dispute.

VI. ADMISSIBILITY

94. Article R49 of the CAS Code provides – in its pertinent parts – as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.”

95. The Appellant directed his Statement of Appeal against the “*decision of the IOC rejecting his request to be invited at the Olympic Games Paris 2024*”. He deemed the “decision by the IOC” to be the First IOC Communication dated 15 June 2024. From the evidence and submissions tendered by the IOC subsequently, it was revealed that there was a decision made by the AINERP on 23 May 2024 (the “Decision”), which was the reason for the IOC not to invite the Appellant to the Olympic Games Paris 2024. The Decision was communicated to the Appellant on two occasions (the First IOC Communication on 15 June 2024 and the Second IOC Communication on 5 July 2024). As such, while the Panel considers the submission of the Appellant, it interprets the generic phrasing of “*the decision by the IOC not to allow the participation of the athlete A. as an individual Neutral Athlete in the Olympic Games Paris 2024*”, to refer to the Decision with the other two later occasions as communications.
96. The Statement of Appeal was timely filed and complied with the requirements set by Article R49 of the CAS Code. There are no issues raised by the Respondents on the admissibility of the appeal based on the timeliness of the document submissions.
97. B. has submitted that it has no *légitimation passive* to be respondent in the present case, as the Appellant only included in his request for relief for the annulment of the Decision by the IOC, which does neither involve nor concern B. B. contests that while the Appellant is already deemed ineligible to qualify for the Olympic Games Paris 2024 pursuant to the Final B. Decision, the Appellant made the decision to only appeal against the Decision by the IOC, thus rendering the Appellant’s present case against B. moot.

98. The Panel notes that according to settled jurisprudence before the Swiss Federal Tribunal, the question of standing to be sued (*légitimation passive*) relates to the merits and not the admissibility of the case (see SFT 128 III 50 of 16 October 2001, at 55; SFT 4A_424/2008 of 22 January 2009, para. 3.3.; CAS 2008/A/1639, para. 3). The principle is similar for the question of standing to sue (*légitimation active*) (see among many references: CAS 2015/A/3959, para. 81; CAS 2015/A/4289, para. 110; SFT 128 III 50, 55; SFT 108 II 216, cons. 1; see also Mavromati/Reeb, *The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials*, 2015, R27, no. 82).
99. As such, the Panel will proceed to address the issue of *légitimation passive* raised by the B. under the merits section of this Award below.
100. Given that no further issues of the admissibility of the appeal were raised, the Panel finds that the appeal filed by Appellant is admissible.

VII. OTHER PRELIMINARY ISSUES

101. On 26 July 2024, the Appellant submitted additional documents to be included in the case file, more particularly a statement by the Russian Ministry of Sport (the “Statement by Russian Ministry”). The latter reads as follows:

“We hereby confirm that in the list of candidates for the sports national [...] team of the Russian Federation [...] for [...], approved on [...], as well as in the list of candidates for the sports national [...] team of the Russian Federation [...] for [...], an error has been done in specifying the name of belonging to the physical and sports organization.

In accordance with the letter of the Public-State Association ‘[...] Physical Culture and Sports Society’ of the Republic of [...] dated [...], the list of candidates for the Russian Federation national [...] team [...] for 2024 was adjusted and approved on [...]. The inaccuracy has been corrected.”

102. The Panel at the outset of the hearing has decided to admit the above Statement by the Russian Ministry on file. Article R56(1) of the CAS Code provides as follows:

“Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer.”

103. The Panel accepts that there are exceptional circumstances in the case at hand. The matter in dispute is of great importance for the Appellant and any evidence that helps the Panel to come closer to the truth is particularly helpful. Finally, the Panel notes that the Appellant was only provided with the full evidence on which the First Respondent based its Decision once he received the IOC’s Answer. In view of the above, the Panel finds that the better arguments speak in favour of admitting the new evidence on file.

VIII. SCOPE OF REVIEW

104. Article R57 of the CAS Code provides – in its pertinent parts – as follows:

“The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.”

105. According to Article R57 of the CAS Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance. As a consequence of the *de novo* principle, the Panel is not limited to the facts and legal arguments available at the time of Decision and/or enshrined therein. Instead, the Panel can base its finding on all submissions and evidence submitted to it in the course of the CAS proceedings.

IX. THE APPLICABLE LAW

106. Article R58 of the CAS Code stipulates that,

“[t]he Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

107. The Appellant and the IOC are in agreement that Article R58 of the CAS Code applies, and that the present dispute be decided primarily according to the Olympic Charter (15 October 2023 Edition), the AIN Principles, and subsidiarily, Swiss law. B. does not make any submission on the applicable law nor does it object to the positions of the Appellant and the IOC.

108. The Panel is in agreement that the present dispute be decided primarily according to the Olympic Charter (15 October 2023 Edition), the AIN Principles, and subsidiarily, Swiss law as the IOC (the body which issued the Decision) is seated in Lausanne, Switzerland.

X. MERITS

109. Based on the submissions of the Parties, the Panel is tasked – in particular – to determine the following issues:

- A. Whether B. has standing to be sued, given that the Decision on appeal only pertains to the IOC?
- B. Whether the Appellant met the eligibility criteria to be able to participate in the Olympic Games Paris 2024?

A. Standing to be Sued

110. The first issue to be considered in the merits is whether B. has standing to be sued, given that the Decision on appeal pertains to the IOC and not B.

111. As mentioned above, the issue of standing has been addressed as a matter of merits by CAS panels.

i) The principles applicable to the issue of standing to be sued

112. The term standing to be sued, or “*légitimation passive*” in French, refers under the subsidiarily applicable Swiss law to the party against whom an appellant must direct its claim in order to be successful. A party has standing to be sued only if it is personally obliged by the claim brought by an appellant, *i.e.*, if the party is the debtor of the claim. (CAS 2006/A/1206; HAAS U., *Standing to Appeal and Standing to be Sued, in International Sport Arbitration*, Bern 2018, p. 53-88, para. 1 with reference to other CAS jurisprudence).

113. When deciding who is the proper party to defend an appealed decision, CAS panels sometimes also proceed by balancing the interests involved and taking into account the role assumed by the association in the specific circumstances. Consequently, one must ask whether a party “*stands to be sufficiently affected by the matter at hand in order to qualify as a proper respondent within the meaning of the law*” (cf. CAS 2017/A/5227, para. 35). Similarly, the CAS panel in 2015/A/3910 held as follows:

“[T]he Panel holds that in the absence of a clear statutory provision regulating the question of standing to be sued, the question must be resolved on basis of a weighing of the interests of the persons affected by said decision. The question, thus, is who [...] is best suited to represent and defend the will expressed by the organ of the association.” (para. 138)

114. In the case at hand, the Decision was issued by the IOC and communicated to the Appellant by the IOC. B. had no role in issuing the Decision, has not advised the IOC to issue the Decision and has no role in enforcing the Decision. It is, thus, not comprehensible – at least at first sight – why B. would be the proper party to defend the Decision issued by the IOC.

ii) The position of the Parties

115. The Appellant at the hearing appeared to agree with the above and stated that B.’s role in these proceedings was more that of an “interested party”. The purpose of directing the dispute also against B. was – according to the Appellant – so that B. would be bound to the Award. If the Panel would set aside the Decision, this would – according to the Appellant – also impact the legal position of B., since by setting aside the Decision, the Final B. Decision would become “immaterial”. The latter follows – according to the Appellant – from the fact that the Decision declares the Appellant ineligible without referring to the Final B. Decision. Furthermore, it is the IOC that is the final authority deciding on the application of the AIN Principles and on the entry of athletes to the Olympic Games. Thus, if the Decision is overturned because the Appellant complies with the AIN Principles, there is no room to further uphold the Final B. Decision.

Finally, the Appellant submits that the legal framework underlying the Decision and the Final B. Decision is identical. Thus, if the Panel is of the view that the Decision must be set aside, the same must apply with respect to the Final B. Decision.

116. B., on the contrary argues that there is no involvement or personal obligation of it in the present proceedings. According to B., for the Appellant to be eligible to participate at the Olympic Games Paris 2024, he must satisfy both the IOC and the B. eligibility criteria in full. B., however, declared the Appellant ineligible *prior* to the Decision, rendering the Decision by the IOC irrelevant to the eligibility status of the Appellant for the Olympic Games Paris 2024. B. maintains that the chronological order of the Final B. Decision on 3 April 2024 renders the Decision by the IOC moot vis-à-vis the eligibility of the Appellant, and that the appeal against the Decision cannot be misused to also encompass an appeal against the Final B. Decision, which – absent an appeal filed within the prescribed deadline – has become final and binding.

iii) The finding of the Panel

117. In determining the parties to be summoned and heard in the proceedings, CAS panels are not in a position to issue an award which affects the rights of a third party if that party has not been correctly summoned by the Appellant and fully heard in the proceedings (CAS 2013/A/3228, para. 8.1 et seq.; CAS 2021/A/8140, para. 51).
118. In order for the Appellant to be eligible to participate at the Olympic Games Paris 2024, he has to fulfil both the [...] QS and the AIN Principles, by virtue of his Russian nationality. Notably, under the [...] QS, the “Additional IF eligibility criteria” mandates the following:

“To be eligible to participate in the qualifying events and in the Olympic Games Paris 2024, all athletes must hold a valid license issued by their National [...] Federation and be recorded in B.’s official database.”

119. Further, under the AIN Principles, there is an express indication that the IF’s eligibility criteria will be considered by the IOC, viz,

“Only Individual Neutral Athletes who have fulfilled the specific eligibility and sporting qualification criteria set by their IF can be considered by the IOC for entry into the Olympic Games Paris 2024.”

120. The Panel notes that while this chronological reading of B. may hold true for the general qualification of athletes, it may not necessarily hold true for the exceptional situation involving athletes with Russian passports. On 19 May 2024, when the IOC Executive Board established the AINERP, it was intended and targeted to evaluate the eligibility of *all* athletes and support personnel with Russian passports “*who obtained, or could obtain*” a qualification place for the Olympic Games Paris 2024. As such, the AINERP was envisioned to be a proactive set-up to evaluate the eligibility of athletes and support personnel with Russian passports, even prior to their qualification or selection. This means that with the establishment of the AINERP, there is an established parallel decision-making framework on the eligibility of athletes with Russian passports by the AINERP, on top of the IF’s eligibility framework. Furthermore, the Decision and the

Final B. Decision are closely linked, since both apply the exact same criteria for granting the status of an AIN and, in addition, both rely on the exact same evidence, *i.e.*, the Sportradar Report which was commissioned by the AINERP.

121. Be it as it may, the Panel can leave the question of B.'s standing to be sued undecided, since the appeal of the Appellant against the Decision is to be dismissed and, therefore, even if one were to follow the Appellant's line of reasoning, this Award cannot impact the legal position of B.

B. The Eligibility Criteria for Olympic Games Paris 2024

122. The second issue which the Panel is tasked to consider is whether the Appellant has satisfied the eligibility criteria for him to participate in the Olympic Games Paris 2024. As mentioned before, in order for the Appellant to be eligible to participate in the Olympic Games Paris 2024, he has to fulfil both the [...] QS *and* the AIN Principles, by virtue of his Russian nationality. In particular, the AIN Principles stipulate that:

“Only those Individual Neutral Athletes and support personnel who have not acted against the peace mission of the Olympic Movement by actively supporting the war in Ukraine may be invited to participate in the Olympic Games Paris 2024. In line with this principle, Individual Neutral Athletes and support personnel who are contracted to the Russian or Belarusian military or national security agencies cannot participate in the Olympic Games Paris 2024.”

i) The applicable legal yardstick

123. The Appellant submits that the Decision constitutes a (disciplinary) sanction and, therefore, must comply with the respective legal prerequisites, *i.e.*, the principles of legality, non-retroactivity, *nulla poena sine culpa* and proportionality. Furthermore, because the Decision is to be qualified as a sanction, the Appellant submits that the IOC has the burden of proof to show that the Appellant has acted against the peace mission of the IOC. The IOC, on the contrary submits that the Decision pertains to an eligibility matter and cannot be qualified as a sanction, because the Decision does not deprive the Appellant of any right that the latter rightfully holds.
124. The terminology used to qualify measures of a sports body is not unanimous. It is however clear and generally accepted that not all measures by a sports body that have adverse effects for the addressee are to be treated the same (HAAS/HESSERT, *The legal regime applicable to disciplinary measures by sports organizations – one size does not fit all*, Festschrift zu Ehren von Lukas Handschin, 2020, p. 279 *et seq.*). A determining feature of a disciplinary sanction or measure is that it is intended to enforce obligations (*e.g.* in the context of anti-doping, match-fixing, etc.) assumed by a particular addressee in the context of a legal relationship arising out of a contract or through membership (*see* BK-ZGB/RIEMER, 2nd ed. 2023, Art. 70 N. 207 *et seq.*). Thus, absent any legal relationship (at the relevant time), there is no room for a disciplinary measure, because there exists no obligation arising from a contract or membership that can or needs to be enforced.
125. In the case at hand, the Appellant is not contractually bound to the IOC and, also, he is

not a member of the IOC. Thus, the Appellant is under no obligation vis-à-vis the IOC and does not hold a lawfully acquired contractual right under the Olympic Charter that may be adversely affected by the IOC's Decision. This clearly follows from the Olympic Charter that provides in Rule 44(3) as follows:

“Any entry is subject to acceptance by the IOC, which may at its discretion, at any time, refuse any entry, without indication of grounds. Nobody is entitled as of right to participate in the Olympic Games.”

126. The legal principles invoked by the Appellant apply first and foremost to disciplinary sanctions (BK-ZGB/RIEMER, 2nd ed. 2023, Art. 70 N. 212 *et seq.*). The matter in dispute here, however, is not of a disciplinary nature. The claim pursued by the Appellant is to oblige the IOC to enter into a contract with him and to declare him eligible to participate in the Olympic Games Paris 2024. Thus, what the Appellant claims in the present matter is that the IOC, in essence, is under an obligation to contract with him. The Appellant does not submit that a contractual or a membership right held by him has been infringed, but seeks to obtain a (participation) right in the Olympic Games Paris 2024 that he has not held at any point in time.
127. The principles invoked by the Appellant also cannot apply by analogy. Of course, for a disciplinary measure to be lawful, it must have a sufficient legal basis in the rules and regulations of a sports body. Evidently depriving someone of a rightfully earned (contractual or membership) right is only possible, if the legal provisions applicable to the legal relationship so allow. However, absent any contractual relationship or membership the situation is completely different.
128. The power not to contract with a third party does not need a legal basis in the rules and regulations of an association. Such power simply flows from the individual freedom of action guaranteed by most constitutions. The power to contractually engage or not to engage with other individuals is part of the contractual freedom of every (natural or legal) person and, therefore, does not depend on an additional basis in the association's statutes. This is all the more true considering that any such legal basis would not serve any purpose. The purpose of a clear legal basis for disciplinary measures in the statutes of an association is to protect the association's members or the persons that have contractually submitted to the rules. They must be able to understand the contents of their legal relationship with the sports association by reading the relevant rules and regulations. By examining the latter, they will be able to understand the obligations they have submitted to and how these obligations will be enforced against them. Non-members do not need comparable protection, since they are not submitted to the rules of the sports association from the very outset. Thus, requiring a regulatory basis in such circumstances is devoid of any sense, since the legal relationship between the sports organisation and non-members is first and foremost regulated by statutory provisions, the basis and contents of which are sufficiently clear. Since no legal basis is needed when refusing to contract with another person, no issues of retroactivity or “fault” (*nulla poena sine culpa*) can arise in this context.
129. This is not to say that there are no legal limits in the case at hand. Obviously, there are limits to the autonomy of a sports organisation to select its members or participants,

particularly in case – as the one at stake – where the association enjoys a monopoly position (*see* BSK ZGB I-SCHERRER/BRÄGGER, 7th ed. 2022, Art. 70 no. 38). In such circumstance, rejecting an application must comply with general considerations of statutory law, in particular with competition law and/or the personality rights of the applicant (SFT 4A_21/2011 consid. 5.2.1.3; CR-CC/FOËX/BENOIT, 2nd ed. 2024, Art. 70 N. 9). The CAS – *e.g.* – has decided that these general principles are breached where a sports organization on the one hand commits to harmonization across all sports by accepting maximum disciplinary sanctions for anti-doping rule violations and then contradicts such self-commitment by not allowing athletes to compete who have fully purged their sanction (CAS 2011/O/2422, no. 33 *et seq.*).

130. However, the mere fact that an association has a monopoly position does not award an unconditional claim to the applicant to be admitted to the association. Instead, the Swiss Federal Tribunal only qualifies the rejection of the applicant as illicit, if the association did not act in conformity with its rules and if the interest of the individual who seeks to become a member outweighs the interests of the association not to admit the applicant (SFT 4A_21/2011 consid. 5.5).
131. To conclude, therefore, the Panel finds that the legal yardstick applicable to determine the legality of the Decision is not the one applicable in disciplinary matters. Instead, the limits to the autonomy of a sport organisation arising from statutory law to select its members or participants apply. It follows from the above that the burden of proof rests on the Appellant to show that – as a matter of exception – he has a claim against the IOC to admit him to the Olympic Games Paris 2024.

ii) Applying the above principles to the case at hand

132. The Appellant does not take issue with the contents of the AIN Principles. Thus, the Appellant does not contest that an athlete can be validly excluded under the applicable rules from the Olympic Games Paris 2024, if he or she is actively supporting the war in Ukraine. It is, thus, uncontested between the Parties that in such case, the interests of the IOC outweigh the interests of the individual to participate in the Olympic Games. The Appellant, however, takes issue with the way the AIN Principles were applied in his case and submits that he did not act “*against the peace mission of the Olympic Movement by actively supporting the war in Ukraine*”.
133. The Respondents, on the contrary, are of the view that the Appellant had six instances for which he could have been deemed to have “*acted against the peace mission of the Olympic Movement by actively supporting the war in Ukraine*”, viz:
 - a) On [...], on the day of [...], the Russian [...] was at a training camp in [...], Russia, wherein a video was posted on Instagram showing the team sitting under a banner of President Vladimir Putin which reads “[...]. *For a strong Russia! For a strong President!*”
 - b) On [...], the Appellant participated in [...] in [...], Russia, [...], at which the Appellant was surrounded by athletes and members of the Russian military wearing the symbol “Z”, which is used both as a Russian military insignia and

as a public symbol of Russia's invasion of Ukraine. In addition, there was a banner reading "[...]", alluding to the purported "denazification" of Ukraine, which is part of the Kremlin's propaganda for the invasion.

- c) In [...], the Appellant attended the opening ceremony in [...], Russia, of a [...] dedicated to Russian law enforcement officers killed in Donetsk and Luhansk, Ukraine, during Russia's "special military operation", at which the Appellant was photographed alongside Russian officials under the banner bearing the symbol "Z" which reads "[...] dedicated to the memory of law enforcement officers killed during the special operation on the territory of the LPR, DPR and Ukraine".
 - d) In [...], the Appellant attended, as a guest, a [...] held in [...], Russia, dedicated to the memory of [...] military personnel who was killed in the war against Ukraine.
 - e) According to a Twitter (now X) post published by "Base of Ukraine Sports" in [...], the Appellant liked an Instagram post published on [...] with the symbol "Z" and supporting the war in Ukraine. The Appellant had since removed his like from the said post.
 - f) In [...], the Appellant was photographed with a Russian soldier wearing a military uniform who had allegedly taken part in the war in Ukraine.
134. The Panel recalls that the burden of proof lies with the Appellant to show that the AIN Principles were misapplied in his case. Furthermore, the Panel notes that any of one instance of "*act[ing] against the peace mission of the Olympic Movement by actively supporting the war in Ukraine*" would suffice to render the Appellant ineligible for Olympic Games Paris 2024.
135. In the view of the Panel, the requirement of not "*act[ing] against the peace mission of the Olympic Movement by actively supporting the war in Ukraine*" is an objective one. The relevant standard is whether the conduct – viewed by an objective and reasonable bystander – can be interpreted as an active support of the war in Ukraine. If this is the case, the individual may be excluded from participating at the Olympic Games irrespective of whether – subjectively – the athlete supports the war or not. Because it is these actions, and the interpretation of these actions by the public, that bring the IOC in disrepute should such a person participate in the Olympic Games. Mental reservations or the subjective view of the person concerned when engaging in these actions are, therefore, immaterial. Thus, if an athlete actively engages in conduct that supports the war in Ukraine, the Panel is not required to investigate the motive behind such behaviour, because the latter is of no avail. Accordingly, the Panel will not take into consideration the intentions and the political beliefs of the Appellant. It suffices, for the Appellant to be excluded from the participation of the Olympic Games Paris 2024, that he has engaged in a conduct showing active support for the war in Ukraine, wherein his intentions are not part of the requirement under the AIN Principles.
136. While the Appellant has contested and provided explanation for the above six instances

for which the Report had raised, the Appellant had not denied participating in [...] held in [...], Russia, in honour of [...] on [...] (the “[...] R.”). The Appellant first submitted that he was unsure as to what the [...] R. was about. However as can be seen in the documents submitted on file, the Appellant was surrounded at the [...] R. by athletes and members of the Russian military wearing the symbol “Z” (even though he chose not to wear the uniform with the said symbol himself) which is widely used both as a Russian military insignia and as a public symbol of Russia’s invasion of Ukraine. At the [...] R. also the President of the Russian Federation Vladimir Putin [...]. In his speech, President Vladimir Putin – *inter alia* – stated that “[...]”. It is obvious from the above and all other evidence on file (in particular the video) that the [...] R. was [...] in support of the war in Ukraine. The Appellant participated in that event prominently on stage standing amidst military personnel wearing uniforms and other athletes displaying the “Z”:

[...].

137. In the course of the hearing, the Appellant admitted that upon participating in the [...] R., he understood that the [...] R. was not about “celebrating sports and the athletes”, but that it was held for a “different purpose”. This corroborates the finding of the Panel that the [...] R. – from the standpoint of an objective bystander – clearly was an event in support of the war in Ukraine. The Appellant submitted that once he realized the true purpose of the [...] while being on stage, he could no longer leave and that he was forced to stay. Whether this is true appears rather doubtful. The Appellant must have seen – prior to stepping on stage – all the people attending the event wearing the “Z” sign. Furthermore, the [...] R. was held shortly after the Russian invasion of Ukraine. He must have realized that there was a link between the [...] R. and the war in Ukraine. Be it as it may, it suffices in the eyes of the Panel – for the AIN Principles to be breached – that the Appellant participated in an event glorifying the war in Ukraine. At what point in time he understood the purpose of the [...] R. is immaterial. What is decisive is that he participated (and engaged in the conduct of participating) in the said [...] and thereby “actively” participated in an event which “*support[s] the war in Ukraine*”.
138. Consequently, the Panel does not need to determine whether the Appellant would have been prevented from participating in the Olympic Games Paris 2024 for any other reason, *e.g.* because of the Final B. Decision that rendered him ineligible to participate in the Olympic Games Paris 2024 under both the [...] QS and the AIN Principles. Furthermore, the Panel does not need to analyse all the other incidents listed in the Sportradar Report.
139. To conclude, the Panel finds that the IOC acted lawfully, and consistent with its stated criteria, when not admitting the Appellant to the Olympic Games Paris 2024.

XI. COSTS

(...)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 5 July 2024 by A. against the decision by the IOC not to allow his participation as an Individual Neutral Athlete in the Olympic Games Paris 2024 is dismissed.
2. The decision by the IOC not to allow the participation of A. as an Individual Neutral Athlete in the Olympic Games Paris 2024 is confirmed.
3. A. is not eligible to take part in the [...] competitions as an Individual Neutral Athlete at the Olympic Games Paris 2024.
4. (...).
5. (...).
6. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date of the operative part of the Arbitral Award: 30 July 2024

Date of the reasoned Arbitral Award: 22 April 2025

THE COURT OF ARBITRATION FOR SPORT

Ulrich Haas
President of the Panel

Jeffrey Benz
Arbitrator

Luigi Fumagalli
Arbitrator